

IN SENATE OF THE UNITED STATES.

JULY 17, 1848.

Submitted, and ordered to be printed.

Mr. FELCH made the following

REPORT:

*The committee on Public Lands, to whom was referred the memorial of Agnes Slaeke and the heirs of De Repentigny, praying the confirmation of title to certain lands in Michigan, respectfully report:*

The memorialists claim title to a certain tract of land in Michigan, designated in their memorial as the seignory of St. Mary, at the Sault Ste. Marie, "being six leagues front on the river and six leagues in depth." To substantiate their claim to the land in question, they have presented to the Senate certain documentary evidence which they claim exhibits a perfect title to the land in themselves. The prayer of the petitioners is two-fold: first, that, by virtue of their title in the land, under the grant hereinafter mentioned, their right to it may be confirmed by Congress; and, secondly, if this is refused, that compensation, in the nature of an equivalent for the loss of it, may be given them.

The first and most important question presented is, whether the petitioners (admitting that they are the legal representatives of the original grantees) have made evidence of a valid subsisting title to the land claimed by them.

The lands, to which a confirmation of title is asked, are situated on the south side of St. Mary's river, and bordering thereon, and embrace a tract some eighteen miles square. On the premises is situated a village of some five or six hundred inhabitants, and a portion of it has been occupied as a military post by the United States for nearly thirty years. At this point, the river St. Mary's forms the boundary line between the United States and Canada, west.

The title claimed by the memorialists is founded on a grant made, while the territory comprised within the present limits of Michigan and the two Canadas was under the jurisdiction of that nation, to Messrs. Debonne and Repentigny, who were French subjects.

The original concession purports to have been made by Lejonquiere, the lieutenant governor general, and Bigot, the intendent general of the province of New France, and bears date (in the

margin) October 18, 1750. This, like all other grants by the provincial officers, contains certain stipulations and conditions, and, among them, the necessity of a ratification by the king within one year is imposed. In accordance with this condition, a certified copy of a ratification by the king, then Louis XV., is presented, bearing date the 24th day of June, 1751.

From an examination of the documents presented, and such testimony as is afforded by the history of the country, and public documents relative to the settlements and settlers on the lands in question, the committee are of opinion that there is no valid subsisting title in the memorialists under the grant above mentioned. Waiving all discussion of the numerous questions which might arise on the various conditions with which the grant, being strictly feudal in the terms of the tenure, is burdened, the committee will refer to three objections to the claim, which appear to them to be fatal to it.

1. The premises granted are not described in the grant with sufficient certainty as to location and bounds to establish a title to the premises claimed.

The applicants' petition for a grant is recited in the provincial concession. They petition for "the concession of the Sault Ste. Marie, with six leagues front by six leagues depth, bordering upon the river which separates the two lakes." The grant contained in the same instrument is of "the said Sault Ste. Marie, with six leagues front by six leagues depth, bordering on the river which separates the two lakes." In the confirmation by the king the premises are described as "the place called Sault Ste. Marie, containing six leagues in front upon the portage by six leagues in depth, bordering upon the river which separates the two lakes."

It will be observed that none of these descriptions contain a specification of the exterior lines of the premises granted. At the time of the grant the whole country on both sides of the river St. Mary belonged to the government of France. It is evident that the premises border on the river, yet nothing in the description indicates whether the location is on the north or south side of the river.

The term Sault Ste. Marie is applied to both the falls in the river and to the settlement on the banks. If the term, as used in the grant, designates the falls, as these extend from shore to shore, there is clearly nothing in the term to fix the location on the American side. If it is used to designate the settlement or trading post at the falls, then it becomes important to ascertain on which side of the river this was situated at the time of the grant.

That the grant was intended to cover the small settlement at the place seems evident from the terms of the grant. It is also a matter of history that, about the time of the date of this grant, many of the old French trading posts were granted as seignories, chiefly, as is the case in this concession, to officers of the French army. On each side of the river at the falls is now a village, both of which are known by the name of Sault Ste. Marie, and are about equal in size. When the Indian treaty was made at that place, in

1820, the settlements on the American and Canadian sides are represented by Mr. Schoolcraft, in his "Journal," as about equal in size. If this was the situation of things at the date of the grant it would clearly want that definite description of location necessary to give it validity.

An examination of the writings of the early travellers into this country will give us more definite information on the subject.

The earliest notice of the settlement at the Sault Ste. Marie is about the year 1664, when a council was held by the French authorities with the Indians at this place, which resulted in a stipulation that the French should occupy that post; and a cross was there erected bearing the arms of France. (Lanman's History of Michigan, p. 18.) Father Hennepin visited the place in August, 1679, and says that there was a settlement of savages near the fall of Ste. Marie, called, by the French, Leapers, because they lived near that great fall which they call a leap. His map of the country, published with his travels in 1698, designates this Indian village as on the north side of the river. This traveller also speaks of the portage at the Sault, and advises that both the canoe and the goods for the Indian country be carried overland around the fall. He describes this fall, and Missilimakinak, as the two most considerable passages that all the savages have of the west and north, and says that above two hundred canoes, loaded with commodities for the French at Montreal, come through these passes every year. (Hennepin's New Discovery, pp. 28, 67, and 69.) La Hontan, in his "New Voyages to North America," p. 93, gives an account of his visit to this place on the 2d June, 1688. He speaks both of the Indian village above mentioned and of the Jesuits' house, which he asserts is not far from the village of the Saulteurs or Leapers. Two maps accompany the edition of his work published in 1735, and in both of these the village of the Saulteurs, the Jesuits' house, and the French village, are all located on the north side of the river. He also declares that the place was a great thoroughfare for the *Courrier du Bois*, who traded with the northern people on Lake Superior. Oldmixon's map, in his "British Empire in America," also shows that the village of the Saulteurs was, at the date of its publication in 1708, on the north side of the river. Charlevoix, in 1721, mentions the place, called the falls of St. Mary, as a missionary station with a flourishing church.

These early writers and travellers are all, whose works the committee have been able to consult, who describe the place and its settlement prior to the confirmation of the grant in question in 1751. They show clearly that the first French settlements at these falls were on the north side of the river, and that, at this early period, a portage around the falls was used by the Indians and persons engaged in the fur trade.

It is not known precisely at what time the first settlement was made at this point, or the south side of the river. No notice of such settlement has been found, until some years after the date of the grant. The earliest notice of it is found in Alexander Henry's "Travels and Adventures," p. 58, who visited the place in 1762;

who found it occupied by the French, who had a trading post and small military force there. He says: "Here was a small stockaded fort, in which, under the French government, there was kept a small garrison, commanded by an officer who was called the governor, but who was, in fact, a clerk, who managed the Indian trade, on government account. The houses were four in number; of which the first was the governor's, the second the interpreter's, and the other two, which were the smallest, had been used for barracks. The only family was that of M. Cadotte, the interpreter, whose wife was a Chippeway." Henry's visit to the place was made the year before the country was ceded by the French to the British government. Four years after the cession, in 1767, it was visited by Carver, who, in his travels, page 101, says that, "at the upper end of the straits, stands a fort that receives its name from them, commanded by Mons. Cadot, a French Canadian, who, being proprietor of the soil, is still permitted to keep possession of it."

Thus, all the early travellers, whose works the committee have been able to procure, show that the first French settlements were on the north side of the river; and no mention is made of settlements on the south side, until some twelve years after the grant under consideration. This testimony renders it highly probable, if not absolutely certain, that the land intended to be granted was located on the north side of the river.

It will be observed that, in the description of the premises granted, the location is stated to be upon the portage. If the portage around the falls was proved to have been, at the time of the grant, on the south, or American side of the river, it would fix the location of the premises granted on that side, as claimed by the memorialists. But of this there is no evidence. For many years there have been portages on both sides. That on the Canada shore is the shortest, most direct, and in much the best condition. The superiority of the portage on the Canada side is proved by the fact that within a few years an American vessel was transported around the falls into Lake superior, on the Canada portage, in preference to that on the south side of the river; and in several other recent instances, the committee are informed and believe, that application has been made for leave so to transport other vessels and steamboats, but the privilege has been refused by the Canadians.

In Martin's History of the British Colonies, (volume 3, p. 206,) the river is represented, at the Sault, as "narrowed by a broad tongue of land protruding from the north shore, and affording a site for the storehouses of the Hudson Bay Company." The writer also describes the right, or American shore of the rapids, as varying from ten to fifty feet in height, and asserts that this acclivity is more distant on the Canadian shore. As late as 1762, Henry, ("Travels," p. 57,) describing the south side of the river, says the banks are rocky, and allow only a narrow footpath over them. It is thus made evident that the conformation of the land is such as to be peculiarly fitted for an easy portage, on the north side of the river, while the rocky and more elevated bank, on the south side, is unfavorable to such a passage. That a portage was in existence

and much used, as early as 1679, is proved by Father Hennepin's work, above cited; and if, as is supposed, the historical evidence is sufficient to prove that the settlement was at that time on the north side of the river, it cannot be believed that a portage was used on the opposite side of the river, where there were no settlements, and where the land was less favorable to an overland passage. And this, again, is strongly corroborated by the testimony of Henry, who asserts that, as late as 1762—more than eighty years after other writers speak of the portage around the falls as being much used—that on the south side was a mere narrow footpath. While the committee have been able to find no proof that the portage was located on the south side of the river, at or previous to the date of the grant, the circumstances and proofs above referred to are such as to afford the strongest evidence that it was on the Canadian side; and if so, the land granted must also have been on that side.

But, if it be conceded that the location was intended to be on the south side of the river, still the grant is by no means free from the objection of a want of certainty.

The only monuments or boundaries given in the grant which can aid in defining the limits of the premises, or direct a surveyor in their location, are the river and portage, on the front, and the Sault, or Falls of St. Mary's. The river, which separates the two lakes, is a little more than thirty miles in length, about fifteen miles of which are above, and the same distance below the falls. The rapids in the river are about three-fourths of a mile in length. The breadth of the premises granted is eighteen miles on the river. The fact that one side is bounded by the river, which is thirty miles in length, give no definite location to either of the exterior lines running back from the water. The premises may as well be located, under such a description, on one portion as another, on the whole length of the river. No definite, certain location is given to them, with the single exception that they must embrace the Sault Ste. Marie, and the portage around it. Where the north or south line shall strike the river, is nowhere stated; nor are there any words in the description to show in what part of the premises the Sault is located. The tract granted may commence on the river at its outlet from Lake Superior, and comprise the falls in the northeast corner of the premises, or it may commence at Lake Huron, and embrace the falls within its northwest corner. So the exterior east and west lines may be changed to any intermediate position; varying the location of the premises, for a distance of some twelve or fifteen miles on the river, still embracing the Sault; and each of these different locations will answer the description contained in the grant.

The rules of law on which the objection to the title, founded on the uncertainty of the description, is based, (there being no survey or proof of occupation,) it is believed, are well settled, and of universal application. In the United States *vs.* King *et al*, J. Howards, S. C., reports, 773, the doctrine is stated as "settled by repeated decisions of this court, and in cases, too, where the instrument contains clear words of grant, that if the description was



vague and indefinite, as in the case before us, and there was no official survey to give it location, it could create no right of private property, in any particular parcel of land, which could be maintained in a court of justice."

The title of the United States to the public domain in Michigan was derived from the British government by the treaty of 1783, and was ceded to Great Britain by France by the treaty of Paris, in 1763. Both treaties ceded all the lands which were not held by individuals under valid subsisting titles. And, unless the description in the grant under which the memorialists claim is found to be sufficiently definite and certain to fix the location of the premises granted, and to separate them by proper metes and bounds from the remainder of the public domain, the claim to title cannot be sustained. Such is the doctrine held by this court in the reported case above cited—a case similar in most of its features to that under investigation, and involving a principle which must dispose of this claim.

The foregoing facts and considerations lead, necessarily, to the conclusion, not only that the description of the premises in the grant is too vague, indefinite and uncertain, to locate and convey the land claimed by the memorialists, but that the grant was in fact intended to convey premises on the Canadian side of the river, with the lands of which this government has nothing to do. And, as the premises are now occupied by American citizens, it is the duty of Congress to refuse to yield their possession under a claim which carries with it no valid subsisting title, and to assert, for the benefit of our own citizens, the title in the government to the premises.

2. The grant is also void, in the opinion of the committee, on the ground that the conditions contained therein have not been complied with by the grantees. The cession is in fee simple, subject to certain conditions to be performed by the grantees, their heirs and assigns. Among these conditions, it is expressly stated that the grantees and their tenants shall occupy the lands to the exclusion of all others, in default of which condition, the concession is declared to be and remain null and void.

This condition and the forfeiture of the grant on a failure to perform it, is found no less than three times in the grant and the king's confirmation. That occupancy was the chief inducement to the making of the grant is evident, from the statement contained in the application to the provincial authorities to obtain it. The grantees there state, as advantages to be secured to the government from a seigniority, that "establishments at that place would be so much the more useful, as travellers from the neighboring posts, and those from the Pacific, would find there a secure retreat, and, by the care and precautions which the petitioners propose to take, they would destroy in these regions the commerce of the savages with the English." In accordance with this proposition, and to secure an object at that time so desirable to the French crown, exclusive occupancy of the premises was made, in the most distinct terms, a condition subsequent, and a failure so to occupy is made a

forfeiture of all rights under the grant. And such exclusive occupancy, if not required to take place immediately on acceptance of the grant, must at least be had within a reasonable time, and is required to be continued.

There is no pretence, on the part of the petitioners, that they occupy the premises at the present time; nor is any evidence adduced to show that they were ever in possession under the grant.

Neither the early French settlers, nor the American inhabitants who have more recently established themselves there, appear ever to have claimed to hold under this grant. On the contrary, there is evidence tending to show that they held, and still hold, adversely to it.

The writings of Henry, in 1762, and of Carver, in 1767, show that Mons. Cadotte, a French Canadian, was in possession of the French post, and continued to occupy and claim the premises after the cession of the country to the British.

In the report of the commissioners, appointed under an act of Congress, approved February 21, 1823, who had authority to examine and allow the claims to their lands of the early settlers at this place, much testimony was taken in reference to their early possessions on the premises in question, which is reported at length in the American State Papers, Public Lands, volume 4, page 830, et. seq.

The legal representatives of Jean Bt. Cadotte, the person mentioned by the writers above cited, presented their claim for a parcel of land at the Sault, and proved a continued possession of it in him and his heirs from an early date to the time of presenting the claim in 1823. Joseph Pignette swore that Cadotte, then an Indian trader, was in possession of the premises in 1788, and cultivated the land, on which a large dwelling house, and many out-houses, had been erected. George Yarns swore that Cadotte was in possession in 1794; and also at the time the posts were surrendered by the English in 1796. John Johnston swore that Cadotte was in possession in 1791; that he was "the first settler at the post after the occupation of it by the French troops some twenty or thirty years before the said year 1791. Michael Cadotte, the son of the settler above named, testified that his father took possession of the land claimed through his right "during the time the post at the Sault was occupied by the French troops."

In the examination of a claim to a piece of land adjoining that of the claimants, above mentioned, it was in proof that the premises were occupied by John Bt. Nolin, principal agent of the Fur Company, many years before 1788. An informal deed of the premises was proved from the General Fur Company to Simon McTavish, dated May 26, 1788; and it was also proved that said McTavish, some time in the same year, purchased the premises of Mr. Berthe, an Indian trader at that place, for John Bt. Nolin. These premises comprised the Fur Company's establishment, and are adjoining the old French fort.

From the testimony above cited, and the evidence relative to the

other claims to the Sault, it is evident that these French settlers were connected originally with the military and fur-trade establishments, and continued so connected, until they were discontinued, not far from the year 1763; and that they, and their heirs and grantees, have continued ever since to occupy and claim the lands. This testimony of continued occupation for so many years, now more than three-fourths of a century, by persons other than the grantees, shows clearly not only that the latter have not held exclusive possession of the premises, as required by the grant, but that no possession has been enjoyed by them. That these settlers did not claim through or under the grant in question, or pretend to hold by virtue of it as the representatives of the grantees, is proved conclusively by the manner in which they sought to make their proof before the commissioners, in 1823. Their testimony shows conveyances, transfers of possession and rights by heirship, but no claim of title by grant, or through the grantees, of any government. They adduced proof of their occupancy and cultivation of the lands back to the earliest time of which we have any authentic settlement of the place, but no one claimed through this grant. This is the more striking, as under the various acts of Congress for the confirmation of the old French titles, proof of a grant by the French provincial authorities while the country was under the jurisdiction of that nation, with the king's confirmation, secured the right to an allowance by the commissioners. If these claimants had held and occupied under the grantees in question, their right on this ground would have been simple and certain. The conclusion is irresistible, as they presented no such claim, but relied on their possession only, that they occupied and possessed the premises from within twelve years of the grant to the time of urging their claim, not under the grant, but in their own right of possession, and adverse to the claim of the grantees. If this be so, it follows that through failure in the performance of the conditions of the grant, all rights under it are forfeited.

The long acquiescence of the grantees and their heirs in the possession of the settlers on the premises, also indicates an abandonment of the grant, or a want of confidence in it as a valid subsisting title. If their rights under the grant are such as are claimed in their memorial, and not forfeited by breach of the conditions of the tenure, their title to the premises is perfect, and might, at any time, have been inferred in a court of law. Why has the title never been asserted against the settlers in possession? Why, for three-fourths of a century, have they slept on their rights, allowing others to enjoy and improve the lands? The lapse of time long since sufficient to bar the right of a claimant to dispossess the occupant, is also strongly indicative of a want of confidence in the claim, or an abandonment of all rights under the grant.

These premises have also been considered and treated by our government as well as our citizens, and without interference so far as is known to the committee, by the memorialists, as unconceded lands. A military post was established upon them in 1820, and has been continued ever since. The United States surveys have been ex-



tended over the premises in the usual manner for lands intended for sale, and a thriving village has grown up within their limits.

These evidences against the claim of the applicants are such, in the opinion of the committee, as to show that there is no valid subsisting title, under the grant, which should be recognized by the government to the exclusion of the present occupants of the premises.

3. Independently of these considerations connected with the terms of the grant, and the conditions attached to the tenure under it, there is another objection to the ratification of this title which ought not to be disregarded. Congress early established a board of commissioners, with powers to examine, with a view to confirmation, all French and English titles granted, by competent authority, within that portion of Michigan to which the Indian title had been extinguished. It has always been claimed that the title of the aborigines to the region about the Sault Ste. Marie was extinguished at an early period by the French. It has been so claimed by our own public authorities; it was so claimed in the council held by General Cass with the Indians, at this point, in 1820; and although, as Mr. Schoolcraft relates in his journal of the expedition, the Indians at first denied it, they afterwards admitted the cession. It was so regarded by the commissioners to settle the claims in 1823, (State Papers, Public Lands, volume 4, page 700,) and also by the inhabitants of the place, some of whom presented their claims under the laws contained in the above-mentioned provisions.

The first act of Congress passed in 1804, allowed a confirmation of title derived under any legal grant of the French or English government, made while the territory was under the jurisdiction of the granting power, or by act or resolution of Congress. This law required a notice of the claim to be filed with the register of the land office on or before January 1, 1805, and further provided that, on failure so to file the notice, all rights of the claimants, so far as the same was derived from any resolution or act of Congress, should become void, and forever be barred. By an act, approved March 3, 1805, person claiming under such French or English grants, were authorized to file their claims at any time until the first day of November, 1805; and the law further provided that "the right of any person neglecting to give such notice in writing of his claim, and to have the evidence of the same recorded, shall become void and forever be barred." A subsequent act, in 1808, allowed the notice to be filed at any time previous to January 1, 1809. Thus government has secured to the claimants ample time for the presentation and allowance of their claim, if valid, accompanied with the declaration that the claim should be void if not presented within the time specified. The claimants failed to present their claims under the law, and have thereby forfeited all right to the confirmation now solicited.

Among the papers on file in this case, is a memorandum stating, as a reason why the claim was not presented agreeably to the terms of the acts above cited, that allowances by the commissioners were

limited to 640 acres of land, while a much larger tract was covered by the grant. An examination of the several acts of Congress on the subject, shows that no such limitation was applied to cases of this description. Grants were allowed by these laws, in certain cases, to actual settlers, founded on possession and improvements only, and in such grants the quantity of land was limited as above mentioned. Claims founded on French or English grants had no such limitation, and the laws embraced all such claims whether the quantity of land granted was great or small.

The memorialists pray, in the event of a refusal to confirm their title, that Congress would make them some equitable compensation for the loss of the lands.

If the grantees failed to obtain the premises granted through their own fault or neglect, there would seem to be no right to expect compensation from any source. But if there are equitable claims for such compensation, they do not, in the opinion of the committee, rest upon this government. We have neither made the grant, nor interfered with their full enjoyment of all rights secured by it. The French government is the contracting party, and to that nation they must look for any such compensation. The United States has never undertaken to pay the equitable claims on that government, growing out of cases like the present. The treaty between Great Britain and France, and that between Great Britain and the United States, cede the whole region of country bordering on the lakes, excepting that to which individuals held perfect titles. If this title is found defective and invalid through the acts or the negligence of the grantees, they must bear the loss; if through any negligence or omissions on the part of the grantor, no treaty stipulations, and no principle of comity between nations, or right of the individual claimant known to the committee, require compensation to be made by this government. Many of the old Spanish and French grants, within our present territorial limits, have been judicially declared void or ineffective, but the principle of making compensation to the claimants in such cases out of our own treasury has never, it is believed, been adopted.

The committee recommend the adoption of the following resolution:

*Resolved*, That the prayer of the memorialists be not granted.